

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: Blake L. Mackesy
Debtor

Rushmore Servicing as servicer for
U.S. Bank National Association, not in
its individual capacity but solely as
trustee for RMTP Trust, Series 2021
Cottage-TT-V
v.

Blake L. Mackesy
Jack N Zaharopoulos -Ch13 Trustee
Respondents

CASE NO.: 22-00340-MJC

CHAPTER 13

Judge: Mark J. Conway

Hearing Date: May 9, 2024 @ 10:00 AM

Objection Deadline: April 26, 2024

MOTION FOR RELIEF FROM THE
AUTOMATIC STAY

Rushmore Servicing as servicer for U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 Cottage-TT-V (on behalf of itself and together with any successor and/or assign, “Movant”) hereby moves this Court for an Order (i) pursuant to 11 U.S.C. § 362 (d)(1); vacating the automatic stay to permit Movant, its successors and/or assigns, to enforce its mortgage on the Debtor’s premises located at 394 Ridge Ave, Kingston, PA 18704 and (ii) for such other and further relief as is just and proper. In support of this Motion, Movant respectfully states:

1. The Petition under Chapter 13 of the United States Bankruptcy Code was filed by the Debtor Blake L. Mackesy on February 22, 2022.
2. Movant is the holder of a Note executed by Blake Mackesy dated June 29, 2018, whereby the Debtor promised to repay \$192,547.00 plus interest to Stearns Lending, LLC (the “Original Lender”). A copy of the Note is marked **Exhibit “A”** and attached hereto.
3. To secure the repayment of the Note, Blake Macksey executed a Mortgage in favor

of Mortgage Electronic Registration Systems, Inc., solely as nominee for Stearns Lending, LLC, encumbering the Property commonly known as 394 Ridge Ave, Kingston, PA 18704, which Mortgage was recorded in the Official records of Luzerne County at Book 3018, Page 126276 (hereinafter “Mortgage”). Other than liens with statutory priority, Movant’s mortgage is in first lien position. A copy of the recorded Mortgage is marked **Exhibit “B”** and attached hereto.

4. The Mortgage was ultimately assigned to Movant by an Assignment of Mortgage. A copy of the chain of Assignments of Mortgage are marked **Exhibit “C”** and attached hereto.

5. Pursuant to 11 U.S.C. §362 (d)(1), the court shall enter an order granting a secured creditor relief from the automatic stay for cause “including the lack of adequate protection of an interest in property of such party and interest.”

6. Specifically, courts have found cause for the granting of relief from an automatic stay where the debtor has failed to make post-petition mortgage payments as they become due.

7. A copy of the Local Bankruptcy Form 4001-1 (the “Declaration”), outlining the post-petition default, is attached hereto as **Exhibit “D”**.

8. Under the Mortgage, payments were due in the amount of \$1,653.36/month, which included principal and interest in the amount of \$1,033.64.

9. The following monthly payments are now past due:

<u>Monthly payments due</u>	<u>Amount</u>
February 1, 2024, through April 1, 2024 (3 monthly payments of \$1,653.36 each month)	\$4,960.08
Debtor’s suspense	(\$986.51)
Attorney’s fees for Motion for Relief	\$1,249.00
TOTAL	\$5,222.57

10. The Debtor has failed to make current mortgage payments due under the terms of the Loan. As a result, the Loan remains post-petition due for February 1, 2024, and each subsequent

payment thereafter.

11. Pursuant to 11 U.S.C. § 362(d)(1), the court shall enter an order granting a secured creditor relief from the automatic stay for cause “including the lack of adequate protection of an interest in property of such party and interest.”

12. Specifically, courts have found cause for the granting of relief from an automatic stay where the debtor has failed to make post-petition mortgage payments as they become due. *In Re Taylor*, 151 B.R. 646, 648 (Bankr. E.D.N.Y. 1993).

13. Movant respectfully requests reasonable attorney fees in the amount of \$1,050.00 and costs in the amount of \$199.00.

WHEREFORE, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362 (d)(1); vacating the automatic stay to permit Movant, its successors and/or assigns, to enforce its mortgage on the Debtor’s premises located at 394 Ridge Ave, Kingston, PA 18704; and for such other, further and different relief as to this Court may deem just, proper and equitable.

Dated: April 12, 2024

By: /s/ Lauren Moyer

Lauren Moyer, Esq.

FRIEDMAN VARTOLO LLP

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